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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,457	12/17/2001	Laurie Couture-Dorschner	KCC-16,588	2264

35844 7590 03/10/2005

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EXAMINER	
STEPHENS, JACQUELINE F	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/023,457	COUTURE-DORSCHNER ET AL.	
	Examiner	Art Unit	
	Jacqueline F Stephens	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 December 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-59* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *59* is/are allowed.

6)☒ Claim(s) *1-48 and 52-58* is/are rejected.

7)☒ Claim(s) *49-51* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 12/6/04 have been fully considered but are not persuasive. Applicant argues Elsberg does not disclose the article in an unfastened condition. However, the article is not consistently in an unfastened condition. Based on applicant's response, filed 12/6/04, specifically page 16, paragraph 2, applicant indicates the article is at some point in a fastened conditioned. The limitation of the unfastened condition is directed to an intended use and Elsberg is fully capable being in an unfastened or fastened condition prior to use (see Elsberg col. 4, lines 32-35). The examiner's reliance on the cited sections (col. 2, lines 27-46) was to provide a showing that the article is releasably fastenable, i.e. can be unfastened at some point during use.

Applicant argues support for the unfastened condition by reference to the specification on pages 2-5 on page 16 of the arguments. However, it is noted that the features upon which applicant relies (i.e., the side fastening system not needing to be prefastened at the time of manufacturer, or that the consumer could don the product with the fasteners unfastened) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-4, 8-21, 29-43, 46-48, and 52-58, as best understood by the examiner are rejected under 35 U.S.C. 102(a) as being anticipated by Elsberg USPN 6287287.

As to claim 1, Elsberg discloses a disposable garment comprising: at least one front panel 36 comprising a fastening component 66; at least one back panel 42 comprising a mating fastening component 64; at least one frangible bond 80 connecting the front panel and the back panel. Since the claims do not specifically state the unfastened condition is prior to use, the examiner interprets the fastening component and the mating fastening component being in the unfastened condition at some point (col. 2, lines 27-46). The unfastened limitation is directed to an intended use of the article. "Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art." See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. The invention of Elsberg meets the structural limitations of the frangible bonds, and fastening, and mating components in that fastening and mating components are capable of being in an unfastened condition (col. 4, lines 29-35).

As to claim 2, Elsberg discloses the garment further comprises at least one first opening and at least one second opening (Figures 2-4).

As to claim 3, Elsberg discloses the frangible bonds can be continuous lines (col. 16, line 62). Since the frangible bonds 80, 82 are shown at the waist opening and leg opening (Figure 2), it is reasonable to conclude a continuous bond would also extend from the waist to the leg opening.

As to claim 4, see Figure 1.

As to claim 8, Elsberg discloses a strength of the frangible bond is in a range from about 10 grams to about 2700 grams (col. 17, lines 17-23).

As to claim 9, Elsberg discloses a strength of the frangible bond is less than about 2700 g (col. 17, lines 17-23).

As to claim 10, Elsberg discloses a strength of the frangible bond is in a range from about 200 grams to about 2000 grams (col. 17, lines 17-23).

As to claim 11, Elsberg discloses a strength of the frangible bond

is less than about 2000 g (col. 17, lines 17-23).

As to claim 12, Elsberg discloses a strength of the frangible bond is in a range from about 500 grams to about 1000 grams (col. 17, lines 17-23).

As to claim 13, Elsberg discloses a strength of the frangible bond is less than about 1000 g (col. 17, lines 17-23).

As to claim 14, Elsberg discloses the frangible bond 80 is located on a tab 56, which extends from one of the front panel and the back panel (Figure 3).

As to claim 15, the limitation regarding the mating fastening component being engageable only upon breaking the frangible bond is directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. The invention of Elsberg meets the structural limitations of the claim in that the article comprises a front side panel comprising a fastening component; a back side panel comprising a mating fastening component; a frangible bond 80, 82 connecting the front side panel and the back side panel, the

fastening component and the mating fastening component being in the unfastened condition (Figure 4; col. 2, lines 27-46, and col. 4, lines 29-35).

As to claim 16, Elsberg discloses a strength of the frangible bond is less than about 2700 grams (col. 17, lines 17-23).

As to claim 17, Elsberg discloses a strength of the frangible bond is less than about 2000 grams (col. 17, lines 17-23).

As to claim 18, Elsberg discloses a strength of the frangible bond is in a range from about 500 grams to about 1000 grams (col. 17, lines 17-23).

As to claim 19, Elsberg discloses a disposable garment, comprising: a chassis including a first front side panel and a second front side panel, a first back side panel and a second back side panel, and defining a waist opening and first and second leg openings (Figure 4); each front side panel having an inner surface and an outer surface and defining a distal edge; each back side panel having an inner surface and an outer surface and defining a distal edge (Figure 4); a first frangible bond 80 connecting the first front side panel and the first back side panel; a second frangible bond 82 connecting the second front side panel and the second back side panel; wherein each of the front side panels comprises a fastening component bonded to one of the inner and the outer surfaces adjacent the distal edge of the front side

panel (Figure 4), and each of the back side panels comprises a mating fastening component bonded to one of the inner and the outer surfaces adjacent the distal edge of the back side panel (Figure 4), the fastening component and the mating fastening component being in the unfastened condition (col. 17, lines 65 through col. 18, line 9). Since the claims do not specifically state the unfastened condition is prior to use, the examiner interprets the fastening component and the mating fastening component being in the unfastened condition at some point (col. 2, lines 27-46). The unfastened limitation is directed to an intended use of the article. "Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art." See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. The invention of Elsberg meets the structural limitations of the frangible bonds, and fastening, and mating components in that fastening and mating components are capable of being in an unfastened condition (col. 4, lines 29-35). Each of the front side panels defines a distance between the fastening component and the distal edge, and each of the back side panels defines a distance between the mating fastening component and the distal edge (Figure 4).

As to claim 20, Elsberg discloses the frangible bonds can be continuous lines (col. 16, line 62). Since the frangible bonds 80, 82 are shown at the waist opening and

leg opening (Figure 2), it is reasonable to conclude a continuous bond would also extend from the waist to the leg opening.

As to claim 21, see Figure 2.

As to claim 29, Elsberg discloses a strength of each of the frangible bonds is less than about 2700 grams (col. 17, lines 17-23).

As to claim 30, Elsberg discloses a strength of each of the frangible bonds is less than about 2000 grams (col. 17, lines 17-23).

As to claim 31, Elsberg discloses a strength of each of the frangible bonds is in a range from about 500 grams to about 1000 grams (col. 17, lines 17-23.

As to claim 32, Elsberg discloses the first and second frangible bonds 80,82 is located on at least one tab 56, which extends from the distal edge of at least one of the side panels (Figure 4).

As to claim 33, see Figure 4.

As to claim 34, see col. 16, lines 17-22).

As to claim 35, the frangible bonds are aligned with the fastening components on the front panel (Figure 4).

As to claim 36, Elsberg discloses an absorbent garment, comprising: a chassis including a first front side panel and a second front side panel, a first back side panel and a second back side panel, defining a waist opening and first and second leg openings, and each front side panel and each back side panel having an inner surface and an outer surface; each front side panel defining a distal edge; each back side panel defining a distal edge (Figure 4); a first frangible bond 80 connecting the first front side panel and the first back side panel; and a second frangible bond 82 connecting the second front side panel and the second back side panel; each front side panel and each back side panel having a nonwoven substrate (col. 5, lines 36-37) and at least one of the front side panels and the back side panels defining an attachment surface 66; and at least one fastening component 64 bonded to one of the front side panels and the back side panels on one of the inner surface and the outer surface, the at least one fastening component comprising a mechanical fastening element adapted to refastenably engage the attachment surface.

As to claim 37, see Figure 3.

As to claim 38, Elsberg discloses an alternate configuration where the at least one fastening component is bonded to the outer surface of the chassis (col. 11, lines 21-31).

As to claim 39, Elsberg discloses the absorbent garment of claim 36 wherein the attachment surface comprises complementary loop fasteners (col. 13, lines 15-34).

As to claim 40, Elsberg, discloses the absorbent garment of claim 36 wherein the attachment surface comprises complementary hook fasteners (col. 13, lines 15-34).

As to claim 41, see Figure 4, elements 80, 82 on the front panel.

As to claim 42, see Figure 4, elements 80, 82 on the back panel.

As to claim 43, the frangible bonds are aligned with the fastening components on the front panel (Figure 4).

As to claim 46, Elsberg discloses a strength of each of the frangible bonds is less than about 2700 grams (col. 17, lines 17-23).

As to claim 47, Elsberg discloses a strength of each of the frangible bonds is less than about 2000 grams (col. 17, lines 17-23).

As to claim 48, Elsberg discloses a strength of each of the frangible bonds is in a range from about 500 grams to about 1000 grams (col. 17, lines 17-23).

As to claim 52, An absorbent garment, comprising: a chassis including a first front side panel and a second front side panel, a first back side panel and a second back side panel, defining a waist opening and first and second leg openings, and each front side panel and each back side panel having an inner surface and an outer surface; each front side panel defining a distal edge (Figure 4); each back side panel defining a distal edge; a first frangible bond 80 connecting the first front side panel and the first back side panel; and a second frangible bond 82 connecting the second front side panel and the second back side panel; a portion of the chassis having a nonwoven substrate defining an attachment surface 66; and at least one fastening component bonded to one of the front side panels and the back side panels on one of the inner surface and the outer surface, the at least one fastening component comprising a mechanical fastening element adapted to refastenably engage the attachment surface (col. 13, lines 15-34).

As to claim 53, see Figure 4, elements 80, 82 on the front panel.

As to claim 54, see Figure 4, elements 80, 82 on the back panel.

As to claim 55, the frangible bonds are aligned with the fastening components on the front panel (Figure 4).

As to claim 56, Elsberg discloses a strength of each of the frangible bonds is less than about 2700 grams (col. 17, lines 17-23).

As to claim 57, Elsberg discloses a strength of each of the frangible bonds is less than about 2000 grams (col. 17, lines 17-23).

As to claim 58, an absorbent garment, comprising: a chassis including a first front side panel and a second front side panel, a first back side panel and a second back side panel, and each front side panel and each back side panel having an inner surface and an outer surface; one of the front side panels and the back side panels comprising a nonwoven substrate and defining an attachment surface 66; and at least one fastening component 64 bonded to the inner surface of one of the front side panels and the back side panels, the at least one fastening component comprising a mechanical fastening element adapted to refastenably engage the attachment surface ; wherein the at least one fastening component engages the attachment surface (col. 13, lines 15-34), and the inner surface of the first front side panel faces the inner surface of the first back side panel (Figure 2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 5-7, 22-28, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elsberg USPN 6287287.

As to claims 5-7, 28, 44, and 45, Elsberg discloses the present invention substantially as claimed. However, Elsberg is silent on the width of the frangible bonds. Elsberg teaches various shapes and configurations for the frangible bonds to provide bonds suitable for maintaining the diaper in a prefastened condition (col. 16, lines 54-67). One having ordinary skill in the art would be able to determine through routine experimentation the ideal size of the frangible bonds for a particular application.

As to claims 22-27, Elsberg discloses the present invention substantially as claimed. However, Elsberg is silent on the distance between the fastening components and the distal edges of the front and back panels. Elsberg teaches various configurations for the fastening components to provide a fastening system suitable for maintaining the diaper in a engaging the front and back panels so that the diaper can encircle the waist and hips of the wearer (col. 11, lines 59). One having ordinary skill in the art would be able to determine through routine experimentation the ideal size of the fasteners and distance from the distal edges of the panels to maintain the article in a fastened condition in use.

Allowable Subject Matter

7. Claim 59 is allowed.

8. Claims 49-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571)272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Examiner
Art Unit 3761

February 27, 2005